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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 KIM SHELBY, an individual,

19 Case No.:

20 Plaintiff,

21 PLAINTIFF'S COMPLAINT FOR

22 v.
23 TUFAMERICA, INC., a New York
24 Corporation; and DOES 1 through 10,
25
26 Defendants.

27
28 1. COPYRIGHT
INFRINGEMENT
2. MISAPPROPRIATION OF
LIKENESS

Jury Trial Demanded

29
30 Kim Shelby, by and through its undersigned attorneys, hereby prays to this
31 honorable Court for relief based on the following:

32
33 **JURISDICTION AND VENUE**

34 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
35 *et seq.*
36 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
37 1338 (a) and (b).

3. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1337 (a).

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

5. Plaintiff KIM SHELBY is an individual residing in Los Angeles County.

6. Plaintiff is informed and believes and thereon alleges that Defendant TUFAMERICA, INC. (“TUFAMERICA”) is a corporation organized and existing under the laws of the state of New York, with its principal place of business located at 10 West 37th Street, Suite 601 New York, New York 10018, and is doing business in and with the state of California.

7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

8. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and/or adopted each of the acts or conduct alleged, with full knowledge of all the facts and

circumstances, including, but not limited to, full knowledge of each violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

CLAIMS FOR RELIEF

9. Plaintiff is a gospel singer who owns original songs including but not limited to songs titled “We as One,” “I’m Glad About It,” “I’ll do Anything,” “Live for Christ,” “Anointing,” and “Oh Yes You Do” (collectively “Subject Songs”) that have been registered with the United States Copyright Office prior to the acts of infringement alleged herein under registration numbers: SRu 212-173, SRu 215-589, and SRu 218-666.

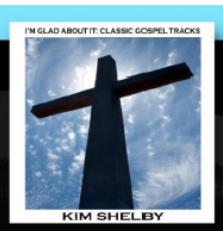
10. Plaintiff is informed and believes and thereon alleges that TUFAMERICA, DOE Defendants, and each of them distributed and/or sold music albums (“Subject Product”) including songs that are substantially similar, if not identical, to the Subject Songs without Plaintiff’s authorization, including but not limited to an album sold by Amazon under ASIN B004LP1UP4 titled “I’m Glad About It: Classic Gospel Tracks by Kim Shelby,” with the record label for that album listed as TUFAMERICA. A screen capture of this album is included below:

1111

Subject Product

Share    

I'm Glad About It: Classic Gospel Tracks
Kim Shelby (Artist) | Format: Audio CD
Be the first to review this item



See all formats and editions

Audio CD

—

Add to Wish List

Have one to sell? [Sell on Amazon](#)

Click to open expanded view



Editorial Reviews

I'm Glad About It: Classic Gospel Tracks by Kim Shelby

Track Listings

1. We As One
2. I'm Glad About It
3. Jesus Is The Answer
4. I'll Do Anything
5. Live For Christ
6. Anointing
7. Never Gonna Stop
8. Oh Y You Do

Product Details

Audio CD (January 31, 2011)
Label: Tuff City
Run Time: 31 minutes
ASIN: B004LP1UP4

Average Customer Review: Be the first to review this item

Currently unavailable.
We don't know when or if this item will be back in stock.

11. Plaintiff is informed and believes and thereon alleges that TUFAMERICA, DOE Defendants, and each of them distributed and/or sold unauthorized albums bearing her name and including the Subject Songs.

FIRST CLAIM

(For Copyright Infringement - Against All Defendants, and Each)

12. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

13. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures albums and/or is a record label.

14. Plaintiff is further informed and believes and thereon alleges that said Defendants, and each of them, have an ongoing business relationship with Defendant retailers, and each of them, and supplied infringing products to said retailers, which albums infringed the Subject Songs in that said albums were comprised of unauthorized reproductions of the Subject Songs.

15. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyright by creating, making and/or developing directly infringing and/or derivative works from the Subject Songs and by producing, distributing and/or selling Subject Products through a nationwide network of retail stores, catalogues, and websites.

16. Due to Defendants', and each of their, acts of infringement, Plaintiff has suffered damages in an amount to be established at trial.

17. Due to Defendants', and each of their, acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained profits they would not otherwise have realized but for their infringement of the Subject Songs. As such, Plaintiff is entitled to disgorgement of Defendants', and each of their, profits attributable to the infringement of the Subject Songs in an amount to be established at trial.

18. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed copyright infringement with actual or constructive knowledge of Plaintiff's rights such that said acts of copyright infringement were, and continue to be, willful, intentional and malicious.

SECOND CLAIM

(For Misappropriation of Likeness - Against All Defendants, and Each)

19. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

20. Plaintiff is informed and believes and thereon alleges that Defendants have and are using Plaintiff's name, identity, voice, likeness, and/or personal information for commercial advantage without Plaintiff's consent.

21. Plaintiff is informed and believes and thereon alleges that Defendants have and are appropriating Plaintiff's name, identity, voice, likeness, and/or personal information for commercial advantage by selling Subject Products including, but not limited to an album sold by Amazon under ASIN B004LP1UP4 titled "I'm Glad About It: Classic Gospel Tracks by Kim Shelby," with the record label for that album listed as TUFAMERICA.

22. Plaintiff has never granted her consent or authorization in any way to Defendants for the use of her name, identity, voice, likeness, and/or personal information.

23. Plaintiff is informed and believes and thereon alleges that Defendants' misappropriation of her name, identity, likeness, and personal information has resulted in injury to Plaintiff.

24. Plaintiff is entitled to compensatory and punitive damages due to Defendants' willful appropriation of her name, identity, likeness, and voice.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

- a. That Defendants—each of them—and their respective agents and servants be enjoined from importing, manufacturing, distributing, offering for sale, selling or otherwise trafficking in any product that infringes Plaintiff's copyrights in the Subject Songs;
- b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;

- 1 c. That Plaintiff be awarded its attorneys' fees as available under the
- 2 Copyright Act U.S.C. § 101 et seq. and Cal. Civ. Code § 3344 (a);
- 3 d. That Plaintiff be awarded damages in the amount of the greater of
- 4 \$750.00 or the actual damages suffered by Plaintiff, in an amount to be
- 5 determined at trial, as a result of the unauthorized use of Plaintiff's name
- 6 and likeness as available under Cal. Civ. Code § 3344 (a).
- 7 e. That Plaintiff be awarded punitive damages as available under Cal. Civ.
- 8 Code § 3344 (a);
- 9 f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 10 g. That Plaintiff be awarded the costs of this action; and
- 11 h. That Plaintiff be awarded such further legal and equitable relief as the
- 12 Court deems proper.

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14 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
15 38 and the 7th Amendment to the United States Constitution.

16 Dated: July 6, 2015

17 DONIGER/BURROUGHS

18 By: /s/ Stephen M. Doniger
19 Stephen M. Doniger, Esq.
20 Frank Gregory Casella, Esq.
21 Attorneys for Plaintiff